1945.

File No. O. Motor Tax 45

Legal Department-

A **BRANCH**

Subject:— Opinions under the Bombay Motor Vehicles Tax Act, 1935-

(3/E)

File No. O. Motor Tax, 45

Gen. 194 e.

433-A

C O N T E N T S.

Legal Department File No. O Motor Tax/1945.

Sr. No.	R.I. / O. No.	Subject	Pages.
		Opinions under the Bombay Motor vehicles Tax Act, 1945.	
1.	5608 30-7-45	Sec. 10 (1) - Question regarding the liability of the offender to pay the penalty after his conviction and payment of fine.-	1-2.
2.	7218 1-10-45.	Question whether the primary use of the Vehicles is the carriage of persons or the transport or haulage of goods.-	3-4.

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Office of the R.L.A.

It is true that even on payment of fine the liability to pay the tax due survives and can be enforced as fine under section 10[1] of the Bombay Motor Vehicles Tax Act, 1935, but once the offender is convicted, the question of penalty by way of composition under section 10(2) does not arise. Consequently the view taken by H.D. at p. 5 ante is not correct in so far as it relates to the liability of the offender to pay the penalty after his conviction and payment of fine.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 5608, dated the 30th July 1945.

EVY. 6/7.

Office of the R.L.A.

In his opinion No. 2931 dated 21-4-1936 the R.L.A. (Mr. Sen) opined:

> "The expression 'Goods and materials' (In Art. AIII in Schedule-I to the Bombay Motor Vehicles Tax Act, 1935), appears to be intended to have a wide significance and will in my opinion include such articles as poster or placards or samples intended for display or advertisement. Vehicles used for carrying such articles as can thus be held to be vehicles used for the transport or haulage of goods or materials'. If, however, advertisements or pictures are painted on the body of the vehicle itself such vehicle would not be a vehicle falling under Art. III: it would then fall under Art. V."

on the strength of that opinion Government assessed the tax under Art. AIII in Schedule I to the Bombay Motor Vehicles Tax Act on the B.E.S.T. omnibuses fitted with advertisement boards and called upon the Company to pay the sum of Rs. 4859-6-0, being the difference between the tax due under Art. AIII and the tax paid under Art AIV. Being disatisfied with the levy the company after taking the opinion of Sir Jamshed Kanga wrote to Government observing:

> "Consel (Sir Jamshed Kanga) is of the Opinion thath the primary use of the vehicles is the carriage of persons and not the transport or haulage of goods and that the case primarily falls under Art. IV. Further the statute under which it is sought to levy the taxation must be construed in favour of the subject rather than of Government.

Without prejudice to the above, the Company appreciates that should the company contest the matter and succeed, it will be open to Government to amend the Act under which it is sought to impose such addition, in which case, after amendment, the Company might well be liable with the result that the cost of contesting would be thrown away. In the result without prejudice, the Company is prepared to pay as and from 1st April 1945 the additional tax demanded in respect of such omnibuses, only as carry advertisement boards of the nature referred to etc."

The R.L.A. is requested to advise whether the view of Sir Jamshed Kanga is correct.

2. Supportable on a strict construction of Art. AIII in Schedule I to the Bombay Motor Vehicles Tax Act, 1935, as is the R.L.A.'s opinion of 1936, it appears that the view expressed by Sir Jamshed Kanga is preferable, for "as a general rule and in accord with the prevailing view recenue laws and particularly tax laws should be construed in favour of the tax payer and against Government." (see Crawford p. 502). If Government considers that the ~~xx~~ omnibuses fitted with advertisement boards ought to be taxed under Art. AV instead of under Art. AIII in Schedule I the safer course would be to amend the Act suitably, pending which the offer of the B.E.~~XXX~~ S.T. Which appears reasonable may be accepted.

Sd/-

Remembrancer of Legal Affairs.

U.R. to H.D., No. 7218, dated the 1st October 1945.